

## Federal Communications Commission

DA 03-744

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Derby, Kansas)

MM Docket No. **01-44**  
RM-10022

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: March 11, 2003

Released: March 20, 2003

By the Chief, Video Division:

1. The Commission has before it for consideration at the request of Pappas Telecasting of America ("Pappas"), the *Further Notice of Proposed Rule Making*, 17 FCC Rcd 15473 (2002), proposing the allotment of DTV channel **46** to Derby, Kansas. Pappas and Montgomery Communications, Inc. ("Montgomery") filed comments.<sup>1</sup> Pappas filed reply comments.

2. Initially, the Commission issued the *Notice of Proposed Rule Making*, 16 FCC Rcd 4423 (2001), at the request of Pappas, proposing the allotment of channel **59** to Derby. After the Notice was issued, the Commission adopted an *Order* reallocating the 698-746 MHz Spectrum Band (television channels 52-59) from use by television broadcasters to new **uses**.<sup>2</sup> In the *Reallocation Report and Order*, the Commission dismissed pending petitions for new NTSC channel allotments on channels 52-59, but provided an opportunity for parties to file a petition for rulemaking or amendment to their petitions to specify a new NTSC or a DTV channel on channels 2-51 or to propose a new DTV allotment on any available channel between 52-58. In this case, Pappas chose to propose the allotment of DTV channel 46 in lieu of channel 23 to

<sup>1</sup> Montgomery is the licensee of LPTV station KTMJ-CA, channel 6, Junction City, Kansas. Montgomery states that it filed an application to modify KTMJ-CA's facilities to operate on channel 46. It asserts that its application was timely filed during a Class A/Low Power Television application window and pre-dates Pappas' request to allot DTV channel 46 at Derby. Montgomery concedes that Pappas' proposal will not exceed the permissible predicted interference of 0.5% of the population, but advises that any application for DTV channel 46 at Derby must protect KTMJ-CA pending application.

Our engineering analysis indicates that adoption of this proposal does not affect Montgomery's current Class A operation on channel 6. Our records also indicate that Montgomery's pending application for channel 46 is a low power application. In the Commission's *Report and Order* in the *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000), the Commission reaffirmed that the low power television service was a "secondary spectrum priority" service and must not cause interference to existing or new full-service stations. Thus, Montgomery's low power application for channel 46 is not entitled to protection against this proposal.

<sup>2</sup> See *Reallocation and Service Rules for 698-746 MHz Spectrum Band (Television Channels 52-59)* ("Reallocation Report and Order"), Report and Order in F N Docket No. 01-74>17 FCC Rcd 1022 (2002).

Derby, as the community first local commercial DTV service

3. Pappas filed comments restating its expression of interest to apply for DTV channel 46, if allotted. Pappas states that Montgomery's application is part of a mutually exclusive group that is slated for auction at some time in the unknown future. Although, Pappas characterized Montgomery's concerns as speculative, it submitted an engineering analysis demonstrating that a maximized DTV channel 46 at Derby, at the maximum tower of 372.61 meters would cause less than 0.5 % interference to Montgomery's pending application. Finally, Pappas maintains that the proposed DTV channel 46 facility will comply with all applicable technical and spacing requirements while permitting the implementation of the first local television service at Derby, Kansas.

4. We believe the public interest would be served by allotting DTV channel **46** to Derby, Kansas, since it would provide the community with its first local DTV service. DTV channel 46 can be allotted to Derby, Kansas, as proposed. in compliance with the principle community coverage requirement of Section 73.625(a) at coordinates 37-54-12 N. and 97-37-06 W. DTV channel 46 can be allotted to Derby with the following specifications:

| <u>State &amp; City</u> | <u>DTV<br/>Channel</u> | <u>DTV power<br/>(kW)</u> | <u>Antenna<br/>HAAT (m)</u> |
|-------------------------|------------------------|---------------------------|-----------------------------|
| KS Derby                | 46                     | 1000                      | <b>246</b>                  |

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT **IS ORDERED**, That effective May **5**, 2003, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

| <u>City</u>   | <u>Channel No.</u> |
|---------------|--------------------|
| Derby, Kansas | <b>46</b>          |

6. A filing window for DTV channel 46 at Derby, Kansas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

7. IT **IS FURTHER ORDERED**, That this proceeding **IS TERMINATED**.

8. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau